THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.5752 OF 2006

Dated: 23-03-2006

Between

M/s. Daspalla Chitralaya Theatres,

Rep. by its Managing Director

G.K. Mangaraj, S/o. Sir Kamaraj,

Occ: Business, R/o. Vijayawada

and another.

...PETITIONERS

AND

The Municipal Corporation,

Rep. by its Commissioner,

Visakhapatnam and another.

...RESPONDENTS

ORDER:

This writ petition is filed seeking a Writ of Mandamus to declare the action of the respondents in issuing the endorsement dated 18.01.2006 in Rc.No.16250/2004/ACP/II/G3 insisting the petitioners to hand over the site free of cost and proposing to demolish a part of the petitioners' theatres structures i.e. Daspalla Chitralaya Theatres, for the purpose of road widening without following the procedure prescribed in law as illegal and arbitrary.

Learned counsel for the petitioners submits that the first petitioner theatre was constructed in the land of the second petitioner in the year 1964 and the same was renovated in 1985 after obtaining necessary permission from the concerned authorities and

the licencing authority and they have been paying tax regularly to the licencing authority and on the south of the said theatre there is an existing 60 feet road to the theatre. While so, the respondent corporation has taken up road widening programme and marked the effected portion of the road right from the Saraswathi Junction to Jagadamba Junction, in Allure Seetharamaraju Road, which is existing towards south of the petitioners theatre. He further submits that the proposed demolition of buildings would affect the petitioner theater in parking area, canteen, the shed constructed for the watchman and the display board erected on the front side of the theatre. The learned counsel further submits that the respondents without issuing any notice and without initiating any proceedings and without paying any compensation are highhandedly interfering and middling with the petitioner theatre.

The only grievance of the petitioners is that the respondent without paying any compensation for the said structures or lands and without following due process of law, are attempting to demolish the petitioner theatre for the purpose of road-widening.

The learned counsel for the petitioners further submits that the action of respondent without following the due procedure prescribed under law and without paying any compensation either by way of private negotiations or by way of initiating proceedings under the Land Acquisition Act is utter violation of the principles of natural justice as well as Sections 146 and 147 of the Municipal Corporations Act, 1955
(for short 'the Act').

No doubt widening/laying of the road is in the public interest but while laying the road, if any property of private individual is coming in the way, it is for the respondents to acquire the same either by way of initiating land acquisition proceedings or by following due process of law. This Court disposed of number of writ petitions directing the respondents not to demolish the property of the private citizens without following due process of law.

Having regard to the facts and circumstances of the case,
this writ petition is disposed of directing the respondents not to demolish the structures or take away any portion of the property of the petitioners without following due process of law either under Section 146 or 147 of the Act or by private negotiations or by initiating the

proceedings under the Land Acquisition Act, 1894. No costs.

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V. ESWARAIAH, J

March 23, 2006

Note: Furnish C.C. of the order by 25.03.2006

(**B**/**o**)

DSK